Supreme Court, U.S.
FILED
APR 28 1995
OFFICE OF THE CLERK

No. 94-1607

In The

Supreme Court of the United States

October Term, 1994

JACQUELYNE L. NEAL,

Petitioner,

v.

WILLIAM H. BROWN, III, *et al.*, partners practicing law under the firm name of Schnader, Harrison, Segal & Lewis,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

MARGARET S. WOODRUFF*
NANCY WINKELMAN
Attorneys for Respondents

Of Counsel:

SCHNADER, HARRISON, SEGAL & LEWIS
Suite 3600, 1600 Market Street
Philadelphia, PA 19103-4252
(215) 751-2168

* *Counsel of Record*

TABLE OF CONTENTS

Page

COUNTER-STATEMENT OF THE CASE..... 1

SUMMARY OF ARGUMENT..... 6

ARGUMENT 7

I. THE PETITION RAISES NO QUESTION THAT MERITS CONSIDERATION BY THIS COURT .. 7

II. THE DECISION BY THE COURT OF APPEALS WAS CLEARLY CORRECT..... 7

CONCLUSION 9

TABLE OF AUTHORITIES

Page

CASES

Barney v. Latham, 103 U.S. 205 (1880) 8

Day v. Avery, 548 F. 2d 1018 (D.C. Cir. 1976), *cert. denied*, 431 U.S. 908 (1977) 3, 8

Louisville & Nashville R. v. Wangelin, 132 U.S. 599 (1890) 8

Pullman Co. v. Jenkins, 305 U.S. 534 (1939) 8

Salem Trust Co. v. Manufacturers' Fin. Co., 264 U.S. 182 (1924) 8

STATUTES

28 U.S.C. § 1291 4

28 U.S.C. § 1404(a) 5

28 U.S.C. § 1441(a) 7

No. 94-1607

In The

Supreme Court of the United States

October Term, 1994

JACQUELYNE L. NEAL,

Petitioner,

v.

WILLIAM H. BROWN, III, *et al.*, partners practicing law under the firm name of Schnader, Harrison, Segal & Lewis,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

COUNTER-STATEMENT OF THE CASE

Jacquelyne L. Neal, the plaintiff in this diversity action, asks this Court to review the unanimous judgment order of a panel of the United States Court of Appeals for the Third Circuit (Mansmann, Hutchinson and Lewis, JJ.) (Pet. App. 3a), which affirmed the summary judgment for the defendants ordered by the United States District Court for the Eastern District of Pennsylvania (Fullam, Sr. J.). (Pet. App. 44a-48a.) The questions Ms. Neal presents

for this Court's consideration challenge the district court's refusal and the earlier refusal by the United States District Court for the District of Columbia to remand Ms. Neal's action to the Superior Court of the District of Columbia.

Ms. Neal, a Tennessee citizen, started this action on October 5, 1990, by filing a complaint in the Superior Court of the District of Columbia against: Schnader, Harrison, Segal & Lewis, a law firm organized as a partnership; three of the firm's partners, William H. Brown, III, Arthur H. Kahn, and Edward W. Mullinix, who are Pennsylvania citizens; Bernard G. Segal, who is counsel to the firm and a Pennsylvania citizen; and Louis R. Moffa, Jr., who performed legal services for Ms. Neal as an associate of the firm and is a New Jersey citizen. Ms. Neal alleged that the firm had overcharged her for its successful representation of her in a discrimination claim against her former employer, the federal Equal Employment Opportunity Commission. Her complaint contained counts for breach of contract, deceit, fraud, and intentional infliction of emotional distress.

On October 15, 1990, the firm's individual partners started a declaratory judgment action against Ms. Neal in the United States District Court for the Eastern District of Pennsylvania, in which the partners sought declarations that the firm owed Ms. Neal no more than $3,000 and that Ms. Neal had defamed the firm in letters to the firm's clients and in placards she displayed when picketing the firm's offices in Philadelphia and Washington, D.C.

On October 26, 1990, the defendants removed Ms. Neal's action from the Superior Court to the United States

District Court for the District of Columbia because there was complete diversity of citizenship, the amount in controversy exceeded $50,000, and no defendant was a citizen of the District of Columbia. Approximately two weeks after the removal, Ms. Neal amended her complaint in the District of Columbia to name as defendants all the defendants she originally had named and each of the firm's other partners. The new defendants included three persons who were citizens of the District of Columbia, but no person who was a citizen of Tennessee, the state of Ms. Neal's citizenship.

Ms. Neal moved to remand her action to the Superior Court. Relying on *Day v. Avery*, 548 F.2d 1018 (D.C. Cir. 1976), *cert. denied*, 431 U.S. 908 (1977), the United States District Court for the District of Columbia denied Ms. Neal's motion for remand on March 6, 1991, holding that: (1) because the law firm, as a partnership, could not be sued as an entity under District of Columbia law, its "citizenship" must be disregarded for removal purposes; (2) there was complete diversity between the parties, and no party named in Ms. Neal's original complaint was a citizen of the District of Columbia; and (3) Ms. Neal's amendment of her complaint after removal had no effect on the propriety of the removal, which must be determined solely on the basis of the pleadings at the time of removal. (Pet. App. 4a-6a.)

Meanwhile, Ms. Neal had moved to dismiss the firm's declaratory judgment action in the United States District Court for the Eastern District of Pennsylvania. That court granted Ms. Neal's motion on March 26, 1991,

holding that the firm's claims were compulsory counterclaims in Ms. Neal's District of Columbia action. (Pet. App. 7a-12a.)

On March 29, 1991, Ms. Neal appealed to the United States Court of Appeals for the District of Columbia Circuit from an order of the District of Columbia district court refusing to enjoin the defendants from proceeding with their Pennsylvania action. Her notice of appeal also sought review of the district court's denial of her motion to remand. On defendants' motion, the court of appeals dismissed the injunction appeal as moot and referred the motion to dismiss the remand appeal to the merits panel. The court of appeals also appointed an amicus curiae to brief and argue on Ms. Neal's behalf the issue of whether the denial of Ms. Neal's motion to remand could be reviewed by an appellate court before the entry of final judgment. After oral argument, during which both the amicus and Ms. Neal addressed the court, the court dismissed Ms. Neal's appeal for lack of jurisdiction, holding that a denial of a motion to remand is not appealable under 28 U.S.C. § 1291. *Neal v. Brown*, 980 F.2d 747 (D.C. Cir. 1992) (Pet. App. 28a-31a). On April 26, 1993, this Court denied Ms. Neal's petition for a writ of certiorari to review that order. *Neal v. Brown*, 113 S.Ct. 1945 (1993).

The defendants had previously filed motions in the district court to dismiss and for partial summary judgment. On November 19, 1991, the district court had granted defendants some of the relief requested, ordering summary judgment on Ms. Neal's breach of contract claim as barred by the applicable statute of limitations,

dismissing her claim for intentional infliction of emotional distress, and dismissing all of her claims against Bernard G. Segal. (Pet. App. 16a-25a.)

Following the District of Columbia Circuit's dismissal of Ms. Neal's appeal challenging the denial of her motion to remand, the defendants moved to transfer Ms. Neal's action from the District of Columbia to the Eastern District of Pennsylvania for the convenience of parties and witnesses under 28 U.S.C. § 1404(a). After the district court granted that motion (Pet. App. 32a-33a), Ms. Neal tried to stop the transfer by petitioning for a writ of mandamus from the United States Court of Appeals for the District of Columbia Circuit. The court of appeals held that the "district court in this case did not abuse its discretion in concluding that transfer would serve the interest of justice." (Pet. App. 34a.)

After the transfer of her action to the United States District Court for the Eastern District of Pennsylvania, Ms. Neal again moved to remand the action to the Superior Court of the District of Columbia. The Pennsylvania district court denied that motion, holding that it had subject matter jurisdiction based on the complete diversity of citizenship between Ms. Neal and the defendants, that it did not have the power to remand the action to the District of Columbia Superior Court, and that the law of the case doctrine precluded a transfer back to the United States District Court for the District of Columbia. (Pet. App. 35a-36a.)

After some limited discovery, the defendants moved for summary judgment on Ms. Neal's remaining claims for fraud and deceit. On May 19, 1994, the United States

District Court for the Eastern District of Pennsylvania ordered summary judgment for the defendants, holding that Ms. Neal had not produced evidence that defendants' statements to her were false when made, which was a necessary element of her claim for deceit, and that her fraud claim was barred by the applicable statute of limitations. (Pet. App. 44a-48a.)

Ms. Neal took a timely appeal to the United States Court of Appeals for the Third Circuit, in which she challenged the May 19 summary judgment order and various earlier orders by both district courts, including the orders denying her motions to remand to the Superior Court of the District of Columbia.

On November 30, 1994, the United States Court of Appeals for the Third Circuit, in a unanimous judgment order, affirmed the judgment of the district court "[a]fter consideration of all contentions raised by the appellant." (Pet. App. 3a.) Ms. Neal moved for rehearing, which the court of appeals denied on January 4, 1995. (Pet. App. 43a.)

SUMMARY OF ARGUMENT

The petition for a writ of certiorari raises no question of sufficient importance to justify review by this Court. Ms. Neal complains about the denial of a motion to remand what was a patently removable action. The affirmance by the court of appeals of the denial of Ms. Neal's motion to remand was entirely proper and consistent with settled law.

ARGUMENT

I. THE PETITION RAISES NO QUESTION THAT MERITS CONSIDERATION BY THIS COURT.

The petition for a writ of certiorari raises no question that merits consideration by this Court. The denial of a motion to remand a patently removable case is hardly an issue of sufficient importance to merit this Court's attention.[1] There is no special or important reason to grant the writ, and the Court should deny it.

II. THE DECISION BY THE COURT OF APPEALS WAS CLEARLY CORRECT.

This Court also should deny certiorari because the decision of the court of appeals was clearly correct. The defendants removed the action under 28 U.S.C. § 1441(a) on the basis of diversity jurisdiction, there being complete diversity between the parties, the amount in controversy exceeding $50,000, and none of the defendants properly sued being a citizen of the District of Columbia.

---

[1] The petition for a writ of certiorari does not appear to raise any issue other than the propriety of the remand denial, and there certainly would be no reason for this Court to review any of the other rulings in this case. Those rulings involved purely fact-specific issues of no importance to anyone except the litigants in this case, such as whether Ms. Neal's fraud and breach of contract claims were time-barred, whether her deceit and intentional infliction of emotional distress claims met the elements of those torts, and whether the transfer from the District of Columbia to the Eastern District of Pennsylvania was proper.

Ms. Neal argues that her amended complaint, which was filed after the case had been removed and which added District of Columbia citizens as defendants, somehow destroyed federal subject matter jurisdiction. But there indisputably was complete diversity between the parties at all times. Therefore, there was federal subject matter jurisdiction.

The addition of District of Columbia citizens as defendants after the case had been removed did not affect the propriety of the removal because, as this Court has consistently held, the propriety of removal is to be determined from the plaintiff's pleadings at the time of the removal. *See, e.g., Pullman Co. v. Jenkins*, 305 U.S. 534, 537 (1939); *Salem Trust Co. v. Manufactuers' Fin. Co.*, 264 U.S. 182, 189 (1924); *Louisville & Nashville R. v. Wangelin*, 132 U.S. 599, 601 (1890); *Barney v. Latham*, 103 U.S. 205, 215 (1880). The principal case relied on by the District of Columbia district court when it denied Ms. Neal's motion to remand, *Day v. Avery*, 548 F.2d 1018 (D.C. Cir. 1976), *cert. denied*, 431 U.S. 908 (1977), is entirely consistent with this Court's precedents, as is the district court's decision and its affirmance by the United States Court of Appeals for the Third Circuit.

CONCLUSION

For the foregoing reasons, this Court should deny Ms. Neal's petition for a writ of certiorari.

Respectfully submitted,

MARGARET S. WOODRUFF
NANCY WINKELMAN
SCHNADER, HARRISON, SEGAL & LEWIS
Suite 3600, 1600 Market Street
Philadelphia, Pennsylvania 19103-4252
Attorneys for Respondents

April 28, 1995